ACTION
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

87-2589

June 17, 1987

LEGISLATIVE REFERRAL MEMORANDUM

SPECIAL

TO: SEE ATTACHED DISTRIBUTION LIST

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SUBJECT: OMB draft statement and comments on S. 496, the Computer Matching and Privacy Protection Act of 1987.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than COB -- 6/18/87

(NOTE -- Earlier agency comments to OMB on S. 496 were considered prior to drafting the attached statement and technical comments. Agencies should provide only "major" comments which are consistent with the basic thrust of the testimony.)

Direct your questions to Branden Blum (395-3454), the legislative attorney in this office.

James C. Murr for
Assistant Director for
Legislative Reference

cc: Jack Carley, John Cooney, Rob Veeder, Frank Seidl, Karen Wilson, Bill Cramer, Alan Rhinesmith, Bob Rideout, Naomi Sweeney, Sarah Ducich, Ashley Files

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DRAFT

STATEMENT OF THE DEPUTY DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET BEFORE THE HOUSE SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE AND AGRICULTURE, JUNE 23, 1987

Mr. Chairman, I appreciate the opportunity to be here today testifying on S. 496, the Computer Matching and Privacy Protection Act of 1987, as it is being considered by the House of Representatives.

As both the largest user of computers and the largest compiler of information about individuals, the Federal government has a significant stake in this issue. Without automation, there would be no way to operate a government as large and complex as ours. And, without public confidence that the data we have is safe from misuse, our large and complex systems cannot operate.

A look at how Federal programs have grown over the past several decades will give some idea of that complexity. In 1936, the number of families receiving aid to families with dependent children was 147,000. By 1985, that number had grown to 3.7 million. Total AFDC recipients grew in that time span from 534,000 to 10.9 million. In 1970, just over 100,000 miners and their families were receiving black lung benefits. By 1985, that number had nearly tripled. In 1971, the Federal Food Stamp

program served some 9.4 million recipients. In 1984, that number had grown to 20.8 million. Programs besides those providing recipients' benefits have experienced the same explosive growth.

In 1978, Federal Aviation Administration controllers handled 28 million flight operations. In 1986, that number had risen to 34 million. By the end of the century, FAA estimates it will handle nearly 50 million flights each year.

In terms of expenditures, the data is equally dramatic. In 1967, we spent nearly $52 billion to operate human resources programs like education, training, social security, income security, Medicare, and the like. Eleven years later, outlays had nearly quadrupled. By 1991, we expect to be spending over half a trillion dollars on them.

It does not take a great deal of imagination to see that automation is the only way to manage the huge program growth represented by these numbers and to deliver the benefits and services they entail efficiently and fairly.

Fairness is a key element in the operation of government programs, and it cuts two ways. It is important that citizens feel that the government, in providing services and benefits to them, is doing so in a way that distributes these services and benefits in a equitable manner. It is equally important that the honest, hard-working taxpayer believe that government programs

are delivering benefits only to those who are truly eligible to receive them. Automation serves both goals.

One of the most effective ways the government uses automation is to perform computer crosschecks to validate an applicant's eligibility for benefits. It is an undisputed fact that such programs, used in a responsible way, save the government money by preventing applicants from receiving benefits to which they are not entitled and by identifying ineligible recipients. They can also make sure that those who are avoiding paying back debts they owe are not, at the same time, collecting more money from the Treasury. Here are some examples:

- In 1982, the State of Michigan conducted a match that utilized 1982 wage data from the Federal Social Security Administration, 1982 Michigan Aid to Families with Dependent Children (AFDC)and Food Stamp rolls and the (then current) Michigan Food Stamp and AFDC rolls. The match identified some 6,182 hits, 82% of which were found to involve fraud. It identified nearly $47 million in fraud and referred 4,712 cases for prosecution.

  The bottom line of the match is that it cost $1.5 million dollars to do (estimated through April of 1987), but it had a $25.6 million dollar payoff in terms of restitutions.

- In 1985, the State of Illinois performed a Public Aid Verification Match which used files from the AFDC, Medicaid and Illinois General Assistance programs. The purpose was to verify sources and amounts of income for persons receiving public assistance.

  The match cost $171,000 perform. Among the immediate benefits was a reduction in payments for 700 cases resulting in a monthly savings of $400,000. The match also identified some $45 million in past overpayments. Prosecutions and overpayment collection efforts are still in progress; no data are presently available regarding these efforts.

- In 1985, A Social Security Administration (SSA) Matching Program Compared Supplemental Security Income (SSI) files with the Internal Revenue Service's 1099 File (dividends, interest etc.).

  The match cost over $6 million to perform. It identified 161,000 hits and $114 million in overpayments. The match recovered $85 million (savings were derived from collection of overpayments, case termination and avoidance of improper payments).

The Reagan Administration and the council of agencies' Inspectors General, the President's Council on Integrity and Efficiency,

have been involved in computerized matching for eligibility verification since the beginning of this administration. Such matching takes place under administrative guidelines issued by the Office of Management and Budget which establish specific procedures for carrying out these kinds of matches. The procedures are intended to make sure that matching agencies comply with the safeguards contained in the Federal Privacy Act.

In the all the years in which we've carried out matching programs, we have never had evidence that a Federal program was in violation of any Privacy Act provision.

Moreover, the Congress has itself recognized that this kind of automated auditing is necessary to ensure that Federal benefits are delivered only to those who are eligible for them. The Deficit Reduction Act of 1984 contained provisions requiring eligibility and verification matching for applicants for several benefits programs: Food Stamps, Aid to Families with Dependent Children, Medicaid, Unemployment Compensation. And, ordinary citizens have liked the idea for a while. Ten years ago, when the concept was very new, a Harris poll found that 87% of those surveyed thought that it was justifiable to match welfare rolls against employment records to identify people who were claiming benefits improperly.

But, even with this kind of support, there is still the problem that citizens are worried that the power the government has over

their lives can be amplified in possibly harmful ways by computers. After all, that concern was one of the forces that brought about the Privacy Act of 1974. Matching contributes to this perception, and administrative procedures like those prescribed by OMB guidelines can only go so far to allay public concern. That is why we in the Administration have supported the development of a comprehensive legislative solution that will ensure that the government's legitimate need to use this technology and the privacy and other rights of record subjects are put in balance.

And that is what we believe S. 496 seeks to accomplish and why we support it. As passed by the Senate, this bill would create a legal framework within which matching can take place, and, at the same time, provide strict due process procedures designed to ensure citizen rights. The bill requires agencies to create written agreements governing their use of matching records. To make sure that matching procedures are followed, it requires matching agencies to create data protection boards to oversee and approve matches. Citizen due process rights are protected as well. Agencies cannot use adverse data uncovered in a match to deny or cut off a benefit unless they have taken steps to validate its accuracy and have offered the individual an opportunity to explain. Moreover, agencies must make sure citizens know that they can be subject to matching by giving them prior notice.

The provisions in this bill, especially those that provide due process steps to ensure citizen rights, are the keys to creating the kind of balance that is necessary to keep important government programs working efficiently and to reassure a sometimes skeptical public that the government is sensitive to their concerns about automation.

This is not to say, however, that the bill is perfect. As with most procedurally based statutes, there are a number of areas in which the procedures and the categorical definitions provided by S. 496 may work less effectively than its drafters contemplated. Rather than going into specifics at this time, I have included as an attachment to my statement a discussion of those areas in the bill that could be usefully improved or clarified.

We are confident that with certain changes, this bill can be made to work. We would be concerned, however, about any effort to substantially enlarge its scope without very carefully considering the effect of any such enlargement. For example, the Senate, at the last minute, expanded the categories of matches covered by the bill to include intra-agency matches in which an agency uses Federal employee financial or personnel records. We have no objection to the intent of the provision. However, as a last-minute addition, the provision created implementation problems: since the "trigger" for much of the matching due process rests on an agreement between the matching agencies, how does this occur when the matching is done by a single agency?

Moreover, since the definition of a "benefit" could be read very broadly, will this provision bring into play the somewhat burdensome administrative requirements for routine administrative matching - matches done, for example to pay employees a biweekly salary, or to match employees with vacancies in order to make personnel job assignments. These are not insurmountable problems, but they do exemplify the dangers of last-minute amendments.

In that regard, we would be wary of including, as a mandatory requirement, that a decision to match be based upon the finding of a favorable benefit-cost analysis.

In saying this, I want to make it clear that OMB is not walking away from our adherence to this kind of analysis as a decision-making tool. For many kinds of matches, benefit-cost analysis is a necessary preliminary management step in a decision to expend scarce governmental resources, and we endorse that process. Indeed, the "Model Control System and Resource Document for Conducting Computer Matching Projects Involving Individual Privacy Data," that OMB and the PCIE promulgated in 1983 to assist agencies in establishing matching programs, prescribes benefit-cost analyses as an initial step in the matching process.

However, we think that prescribing a specific benefit-cost methodology by statute would be a mistake. There are some kinds of matches where benefit-cost analyses may not provide adequate

information on which to base a decision. In others, benefit-cost analysis may only be one of the factors in determining to perform a match. In still others, achieving a favorable ratio may not be relevant to a decision to proceed.

Let me detail some examples:

- In 1982, the Selective Service System began an effort to ensure the highest possible level of compliance with the draft registration requirement for the nation's 18 year old males. They began a matching program using such files as State driver registration data bases, lists from educational institutions, voters' registration lists, etc.

  The purpose of the program was to identify individuals who are required to register, but have not done so. Attempting to quantify a decision to proceed in this way, with a series of matching efforts, is not only difficult, but irrelevant. What value does one assign to having a draft age population readily identified in case of a national emergency?

  In any case, the SSS has received approximately 2 million new registrations in response to mailings sent out as a result of the hits developed by this matching effort. The compliance rate is now approximately 98%.

- During 1986-1987, the Department of Transportation undertook a program to determine how reliable self certification procedures are for the issuance of certificates to air transport, commercial, and general aviation pilots who have a history of alcohol or drug related problems. Present policy is that pilots are required to report current and timely information relating their alcohol and drug use.

The match began as a statistical match using data from the National Driver Register (NDR) and FAA medical files. The results were disturbing. Of 711,648 active airmen medically certified by the FAA, approximately 10,300 had had their driver's licenses revoked within the past seven years. Nearly 80% did not report the fact of their conviction to the FAA as required.

With this statistical evidence, the matching effort moved to the next step - identifying specific individuals. The same FAA data base was matched with Florida's driver file on alcohol or drug related problems. The results were equally disturbing. The match identified 1584 as having at least 1 DWI conviction; 1124 had not reported this fact to the FAA.

Now the cost of this match was minimal; but the findings are signficant for an assessment of the value of self-reporting in these kinds of situations. What is that worth? Should

the FAA have abandoned this effort because of an unfavorable ratio? I don't think so.

- Some matches are worth doing, even absent the showing of a favorable benefit-cost ratio, because they contribute so directly and significantly to program integrity. An HHS match conducted in 1986 was intended to determine the validity of the basic identifier used in the Aid to Families with Dependent Children Program: the Social Security Number. The match found that overall, 18% of the numbers used could not be verified. The range was from 8% in South Dakota to over 43% in Puerto Rico. There were 14 states where the figure was in excess of 20%.

In short, benefit-cost analysis is a powerful and effective tool for agency managers to use in channelling resources to areas where they will achieve the greatest payoff. We support its use; indeed, in some instances we require its use. Rather than mandating, by statute, a particular methodology, however, and rather than requiring a favorable ratio in all cases involving matching decisions, we would suggest developing a requirement that takes into consideration the concerns and practices detailed above.

Similarly, we think it would be a mistake to expand the role of the Data Protection Boards until we have some idea of how they will work in actual practice. We hope that the Boards themselves

will prove useful in helping agencies make good decisions about participating in or conducting matches. Their records should provide OMB and the Congress with information on which to base oversight activities. S. 496 confines their role essentially to that of effecting oversight and approval of agency matching activities. Agencies that do not participate in matches would not be required to establish boards. We think this limited role makes sense from an administrative and cost-of-implementation basis. At some point in the future, we may wish to recommend expanding their role to cover other privacy activities and to make such boards an integral part of each agencies' Privacy Act implementation activities. But, until we have a baseline established, we think it unwise to move from the role the bill prescribes.

There is one other area of concern related to these boards. By placing matching approval authority with the boards, the Congress must recognize that it is deliberately compromising the independence of the Inspectors General. The fact that the agency IG (if any) must be a member of the board, does not alter the fact that he or she may have a decision to match overturned by board members for parochial reasons. The best solution would be to exempt the Office of Inspector General matching activity from the reach of these boards. At the very least, we recommend that the bill explicitly require that any board decision to disapprove an IG match must be ratified by the agency head and that if it is

so ratified, the disapproval be immediately reported to the Office of Management and Budget and the Congress.

One last area where we would urge caution is in the Federal/State data interchange. This is an area where it is extremely difficult to develop satisfactory legislation to continue the privacy protections that apply to Federal records when those records are transferred to the States, without triggering serious States' rights issues. It may appear easy to solve the problem by enacting provision that forbids a State recipient of Federal records from subsequently disclosing those records or from using them for purposes outside the Federal/State matching agreement. But, it is likely to prove much more difficult to develop oversight mechanisms or sanctions that will enforce the expected behavior without raising more concerns than are solved. This is an area that must be approached with caution.

In closing, I would like to reiterate our support for matching legislation and to offer to work closely with this Subcommittee in developing a final version that is workable and achieves its expected results. I will take any questions at this time.

DRAFT

COMMENTS ON THE PROVISIONS OF S. 496,
THE COMPUTER MATCHING AND PRIVACY PROTECTION ACT OF 1987,
AS PASSED BY THE SENATE ON MAY 21, 1987:

In general, the provisions of S. 496, by establishing a structure within which automated data exchanges of information can occur, accommodate both the needs of the government for information with which to operate its complex programs and the privacy and other rights of individuals who are the subjects of these matches. However, as with most procedurally based statutes, there are a number of areas in which the procedures and the categorical definitions provided by the statute may work less effectively than the Congress contemplates. Here are specific areas in need of clarification. In some cases it may be enough address them specifically in the legislative history; in other cases, a statutory amendment may be needed.

- The requirement for "notice" to the record subject prior to the initiation of a match and "periodically thereafter" remains a troublesome provision for the agencies, not because of the requirement itself (which everyone agrees is proper), but because of perceived administrative difficulties in implementing it. Here are some suggestions for clarification:

-- Accept constructive notice as a general principle - i.e., publication in the Federal Register of intent to match.

-- Accept and acknowledge constructive notice on a restricted basis in instances when actual notice would interfere with the purpose of a match - to locate absentee spouses, for example.

-- Assure agencies that the provision does not require individual notices sent to each record subject immediately prior to the operation of a match, so long as the individual has been given notice prior to the initial collection of data and at intervals thereafter. Emphasize that when there is a regular process of enrollment in a government benefit program that involves an initial data collection and subsequent contacts to furnish a benefit or re-enroll an eligible participant, there is ample opportunity to put the individual on notice and remind him or her periodically that the government intends to validate the information furnished through matching processes.

o Similarly, the "independent verification" requirement is one which everyone accepts in principle, i.e., one should not use inaccurate data to make decisions about individuals

and therefore, one should take steps to verify accuracy. Nevertheless, we think that the word "independent" is too restrictive a qualifier.

-- Make it clear that "independent" means merely taking additional steps to verify accuracy, not that one must find a (potentially nonexistent) third data source. This could mean taking a hit and going back to the records matched to produce it to make sure those underlying records were accurate, i.e., reconfirmation. It may also be useful to note that the Paperwork Reduction Reauthorization Act requires agencies to evaluate the accuracy and reliability of data and records contained in Federal information systems.

-- Also, as to the required "elements of verification," in some cases, the three enumerated categories will suffice; in other instances, they may be too narrow, especially when a match is done to locate an individual or determine status (e.g., eligible alien status resulting from the Immigration and Naturalization Act as amended), and then make determinations about him or her that may result in an adverse action.

o Independence of the Inspectors General. The bill compromises the independence of the IG by subordinating his

or her decision to conduct a match to the approval of a Data Integrity Board. One consequence may be that matches that arguably ought to be done will not be done for reasons unrelated to good manageent practices. One solution to this problem may be to amend the bill to require that IG matches that are disapproved by the Data Protection Board are required to be confirmed by the agency head and that in any instances where the agency head confirms a disapproval, that fact is immediately reported to OMB and the Congress.

- Data Protection Boards. In some cases, it may be appropriate to establish such boards at the component level, especially in those agencies which engage in a substantial amount of matching. The bill should reflect this fact and also indicate any constraints on such component boards.

- Sanctions. It is unclear what is the extent of the source agency's obligation to ensure that the matching agency is complying with the terms of the matching agreement. The bill should make it clear that the sanctions provision does not place an affirmative responsibility on the part of the source agency to determine the matching agency's compliance with the terms of the agreement.

- Matching agreements.

  -- The bill should be amended to reflect that the prohibition against a matching agency redisclosing records without authorization from the source agency is not meant to override any specific statutory requirements for redisclosure.

  -- Since intra-agency matches, in certain cases are covered, the matching agency will also be the source agency. In this case, the history should indicate that the required agreement is satisfied by a certification on the part of the program official seeking to perform the match that the relevant elements of the matching agreement will be adhered to.

- Definitions.

  -- "Federal benefit program." Since this term triggers many of the Matching Act's provisions, it is important that the legislative history make it clear that the word "agent" is to be read broadly. Otherwise, agencies may deny that an agency relationship exists for a number of programs in which the Federal role is a passive one. Also, the term "provider for" needs to be explained.

-- "Matching program." The inclusion of intra-agency matches using Federal employee records will cover routine administrative matches (payroll, for example) that probably were not meant to be included. Given the prohibition against taking "adverse action" until due process steps are taken, this may create a serious (and unnecessary) administrative burden. For example, when DOD does a personnel records match for assignment purposes, the intra-agency provision is presumably met. Should one be able to challenge an assignment made or not made on the basis of the "adverse action" provisions of the bill? This section should be redrafted to ensure that routine administrative matches of these kinds are not covered.

-- Also as to "adverse action," the bill should make it clear that it is not an "adverse action," to transmit the results of a match to an appropriate investigative agency before notifying the individual and providing an opportunity to refute in cases when an individual would be likely to alter his behavior or destroy evidence.

o Timing for Implementation. OMB and the agencies will have to develop regulations implementing the provisions of this

bill. To achieve uniformity and to ensure implementation proceeds in an orderly way, it would be useful to have a delayed effective date of six months.